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60469-232
OT-5042IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Perez, Jose Sevilleja
Serial Number: 10/551,243
Filed: 09/28/2005
Group Art Unit: 3654
Examiner: Kruer, Stefan
Title: ELEVATOR ROLLER GUIDE

PETITION UNDER 37 C.F.R. §1.181
FOR WITHDRAWAL OF RESTRICTION REQUIREMENT

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby petitions for withdrawal of the Restriction Requirement imposed by the Examiner in this application. Applicant believes that no fee is due. If one is due, the Commissioner is hereby authorized to charge deposit account number 50-1482 in the name of Carlson, Gaskey & Olds.

On August 10, 2006, an Office Action was mailed that included a restriction requirement where the Examiner identified two groups of invention, alleging that they are not so linked as to form a single general inventive concept under PCT Rule 13.1. On September 11, 2006, Applicant timely responded to the restriction requirement with traverse. In an Office Action mailed on October 12, 2006, the restriction requirement was made final by virtue of the

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Examiner withdrawing claims 10-19 from consideration and issuing a substantive Office Action treating only claims 1-9. Accordingly, this Petition is timely.

This application is a national filing from a PCT application. During the PCT search and examination phases, unity of invention between the independent claims was found. The Examiner has not provided a reasonable or justifiable explanation for reaching a conclusion that is the opposite of the conclusion reached during the PCT.

MPEP §1893.03(b) provides:

A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole makes over the prior art.

In this case, the originally presented independent claims had a technical relationship that involves at least one common or corresponding technical feature. Each of the independent claims included a guiding device including a roller mount and a plurality of rollers on the mount to be urged into contact with the guide rail. The main difference between the independent claims is that one of them positively recited at least one guide rail and a cab associated with the guiding device while the other independent claim only recites the guiding device and its components. The presence of the claimed guide rail and cab in one of the independent claims does not eliminate the technical relationship involving the at least one common or corresponding special technical feature from the independent claims. Therefore, the restriction requirement should never have been imposed.

Concurrent with filing this Petition, Applicant has filed a response to the Office Action mailed on October 12, 2006. In that response, Applicant presents a new independent claim 20 and has amended claim 10, which was previously withdrawn from consideration. A copy of that

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Response is attached. Even a cursory review of claims 10 and 20 reveals that they relate to a single inventive concept because of the technical relationship among the inventions that is plain on the face of the claims. Essentially, the difference between the independent claims is that one of them positively recites an elevator cab and a guide rail (claim 20) while the other (claim 10) does not. Otherwise, the claims include the same technical features.

The Examiner also imposed a restriction based upon an alleged presence of different species, which the Examiner found do not relate to a single general inventive concept.

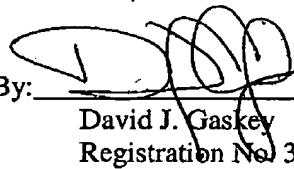
The Examiner intends to restrict out the species shown in Figure 6 compared to that shown in Figure 2. The difference between the two species is that the embodiment shown in Figure 2 includes a low friction insert 64 while the embodiment of Figure 6 includes a roller 82. Applicant respectfully submits that there is no reason for such a species restriction at least because there is no undue burden on the Examiner to consider both embodiments in this application. The mere presence of different embodiments does not give rise to a justifiable species restriction. In the Office Action of October 12, 2006, the Examiner has cited art relevant to both species even though he is only considering one of them. There is no basis for maintaining such a restriction when the Examiner has already found references allegedly showing the features of both species for purposes of examining one of them.

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The Examiner has failed to establish a legitimate basis for imposing and maintaining a restriction requirement in this application. Therefore, Applicant respectfully requests that the restriction requirement be withdrawn.

Respectfully submitted,

CARLSON, GASKEY & OLDS

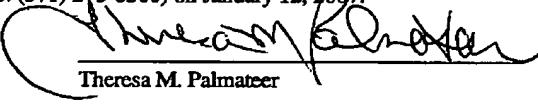
By: 

David J. Gaskey
Registration No. 37,139
400 W. Maple Rd., Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: January 12, 2007

CERTIFICATE OF FACSIMILE

I hereby certify that this Amendment relative to Application Serial No. 10/551,243 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on January 12, 2007.


Theresa M. Palmateer

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